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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,068	04/06/2001	Yong-Hwan Moon	I8941001400	7267

20350 7590 09/27/2002

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[REDACTED] EXAMINER

BAUM, STUART F

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1638

DATE MAILED: 09/27/2002

*M*

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application N .	Applicant(s)
	09/828,068	MOON ET AL.
	Examiner	Art Unit
	Stuart Baum	1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, 7-10, 12-16, and 18-20 are drawn to an isolated nucleic acid molecule comprising an OsEMF1 polynucleotide, operably linked to a plant promoter in sense orientation, transgenic plant comprising said molecule, and method of modulating reproductive development in a plant, classified in class 800 subclass 290 for example.
- II. Claims 1, 4-6, 8, 11, 14, and 17 are drawn to an isolated nucleic acid molecule comprising an OsEMF1 polynucleotide operably linked to a plant promoter in antisense orientation, transgenic plant comprising said molecule, and method of modulating reproductive development in a plant comprising said molecule in antisense orientation, classified in class 800 subclass 286 for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated to each other because nucleotide sequences either encoding different proteins or specifying specific expression patterns are structurally distinct chemical compounds and are unrelated to one another, as are different proteins structurally distinct chemical compounds and unrelated to one another. In the present application, Applicants are claiming a nucleic acid molecule in sense and antisense orientation. It is recognized in the art, that nucleic acid molecules in antisense orientation are used to down-

Art Unit: 1638

regulate the expression or reduce the activity of a specific protein whereas over-expressing a nucleic acid molecule in sense orientation is used to upregulate or increase the activity of a specific protein. Therefore, these sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq (see MPEP 803.04 and 2434). This requirement is not to be construed as a requirement for an election of species, since each nucleotide and amino acid sequence is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, fields of search, and classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1638

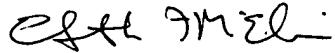
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart Baum whose telephone number is (703) 305-6997. The examiner can normally be reached on Monday-Friday 8:30AM – 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 or (703) 305-3014 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the legal analyst, Sonya Williams, whose telephone number is (703) 305-2272.

Stuart Baum Ph.D.

September 17, 2002

  
ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1800